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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.B.,

a Person Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSICA B.,

Defendant and Appellant.

B287631

(Los Angeles County
Super. Ct. No. 17CCJP00901A)

APPEAL from a judgment of the Superior Court of Los Angeles
County, Martha Matthews, Judge. Affirmed in part, dismissed in part.

Aida Aslanian, by appointment of the Court of Appeal, for Defendant
and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting
Assistant County Counsel, and Sarah Vesecky, Senior Deputy County
Counsel, for Plaintiff and Respondent.

The juvenile court sustained a Welfare and Institutions Code¹ section 300 petition alleging that five-year-old J.B. came within the court's jurisdiction. On appeal, the child's mother contends there is insufficient evidence to support the jurisdictional findings, and that the juvenile court erred in entering a dispositional order removing her son from her custody. We find that substantial evidence supports the jurisdictional findings, which we affirm. We dismiss the appeal as to the dispositional order, which is moot.

FACTUAL AND PROCEDURAL BACKGROUND

J.B. (born Feb. 2012), the subject of this action, is the son of appellant, Jessica B. (mother).² In September 2017,³ J.B. lived with mother and her husband, J.S. J.S. had two sons (J.B.'s stepbrothers), Ja.S. and J.S., Jr., then in sixth and seventh grade, respectively. J.B., mother, and J.S. lived with the sons when they visited.

On September 3, respondent Department of Children and Family Services (DCFS) received a referral alleging that during an argument at which all three children were present, J.S. hit mother with his fists and caused her to sustain visible injuries. J.B.'s maternal grandmother

¹ Statutory references are to the Welfare and Institutions Code.

² J.B.'s father is not a party to this appeal.

³ Further unspecified date references are to 2017.

(MGM) called 911. J.S. had left by the time the police officers arrived, and mother declined medical attention.

A DCFS children's social worker (CSW) visited the family home on September 8, but mother refused to speak with him or to let him see J.B. The CSW interviewed Ja.S. and J.S., Jr., who lived with their mother (and were assessed to be safe). Ja.S. said that mother and J.S. sometimes fought when they were drunk. On September 3, mother got angry at J.S. and tried to block him from leaving a room, and J.S. pushed her away. Ja.S. said his father had consumed a glass of wine but was not drunk at the time. J.S. had his sons' paternal grandmother take the boys away so they would not see him fight with mother. Ja.S. did not like mother, and wanted the adults to stop fighting whenever he was at their home.

When asked about the referral incident, 12-year-old J.S., Jr., told the CSW that he, Ja.S. and J.S. had been watching a movie after J.S. came home from work. J.S. had one glass of wine. Mother was angry about something for which she blamed Ja.S. and J.S., Jr. She threw Ja.S.'s phone. Mother and J.S. argued. She blocked the door when he tried to leave with his sons, and he pushed her away. J.S., Jr., said mother and J.S. fought often, although he did not know why. Usually, they pushed one another and sometimes mother scratched J.S. J.S., Jr., said that he "sometimes" felt safe at his father's home.⁴

⁴ On September 8, the CSW investigating the September 7 referral spoke with a CSW who had investigated an earlier referral in June, which was deemed inconclusive. According to that referral, J.B. was alleged to be a

DCFS interviewed J.B. at his preschool on September 13. J.B. was experiencing nightmares (centered around characters in a “horror game” he had been watching), and felt unsafe in his home. J.S. lived at his house, but he did not see him often. During the interview, J.B. made inconsistent statements, and it was unclear at times whether he was referring to J.S. or to a (“Mario”) video game (e.g., he said J.S. sometimes broke bricks when he got angry). He said mother and J.S. fought about food. When asked to describe J.S., J.B. said he was like “Bowser” (an aggressive antagonist in the Mario game), “smashed” things (e.g., picture frames), and ripped up pictures J.B. brought home. J.B. (who had a small bruise on his shin) reported that J.S. had punched him, and jumped in the air and kicked him on the leg the day before. However, J.B. also said that J.S. had not hit him. J.B. became afraid when mother and J.S. fought, and he had cried in his room after J.S. kicked mother and hit her in the stomach. He told the CSW that mother and J.S. were angry sometimes when J.S.’s sons were at the house, and described his stepbrothers as “rude.” J.B. told the CSW that mother and J.S. drank adult drinks, after which they acted funny, sometimes argued and fell asleep. He had also seen them smoke something outside (which he described as a “red circle and something long”).

victim of emotional abuse by mother and his stepfather, who engaged in either a loud argument or a physical altercation in J.B.’s presence. The family refused services, but was informed that DCFS might proceed differently if it received another referral.

The director of J.B.'s preschool told the CSW that J.B. was a great student and liked school. She did not suspect that he was an abused child, but he had said that his stepbrothers hit him a lot. Mother had told the director that J.S. blamed her for her recent miscarriage.

On September 20, the CSW spoke with the J.S., Jr.'s former therapist, and Ja.S.'s therapist. Both therapists said they had no concerns about the care the boys received from their mother, but shared concerns about the care they received from J.S. J.S., Jr.'s therapist had concerns about mother and J.S. fighting when J.S., Jr., stayed with them. Ja.S.'s therapist told DCFS that the child appeared to have witnessed a lot of domestic violence between mother and J.S. (who had instructed Ja.S. not to disclose information about the family during therapy), suffered anxiety as a result of the adults' conflict, and had difficulty controlling his anger.

The CSW tried to talk to J.S. on September 27. He denied any domestic violence between himself and mother, then abruptly ended the call.

Mother spoke with the CSW on September 27. She was extremely upset and reiterated that she did not intend to cooperate with DCFS. She was upset that J.B. was interviewed without her permission, and said the referral was "bullshit," which she blamed on her stepsons' mother. Mother threatened to retain an attorney and send the CSW and her stepsons' mother to jail if DCFS continued the investigation or came to her home. She questioned how J.B. could be considered to be a neglected child given that he ate well and wore expensive clothing.

Mother was frustrated and under stress due to a recent miscarriage, and the fact that she worked and attended school full-time.

J.B. was detained from mother on October 4. On October 6, DCFS filed a section 300 petition. It alleged that J.B. was at risk due to domestic violence between mother and J.S. in the child's presence, including the adults pushing one another, mother striking J.S. and causing him to bleed, and J.S. kicking mother in the stomach. The petition also alleged that mother had failed to protect J.B. by permitting J.S., who was alleged to have physically abused J.B., to continue living in the home with unlimited access to J.B. (§ 300, subds. (a), (b).)

Detention Hearing

At the detention hearing on October 10 mother requested that J.B. be released to her custody. Her counsel informed the court that mother was no longer living with J.S., was requesting a temporary restraining order (TRO) against him, and would abide by the court's orders.⁵ J.B.'s counsel joined mother's request, on the condition that she obtain a TRO against J.S. and that the child have no contact with him. The court granted mother's request for a TRO. Nevertheless, J.B. was detained after DCFS argued against releasing him to mother's care based, among other things, on allegations that she committed domestic violence

⁵ In her request for the TRO, mother checked a box stating that J.S. had "assaulted or attempted to assault one or more of the persons to be protected." Mother's application describing J.S.'s conduct stated "that [J.S.] has punched [and] pushed the mother, and kicked and punched [J.B.]"

against J.S., that she refused to cooperate with DCFS and that J.B. suffered nightmares. The court gave mother a minimum of three monitored visits per week.

Jurisdiction and Disposition Report

In an interview on October 13, J.B. told a DCFS investigator (DI) that he did not like J.S. because he screamed at mother, made her cry and kicked and punched her. Afterwards, when he saw mother cry she sent J.B. to his room. J.B. said J.S. did not physically discipline him and he was only “mean to [his] mommy.”

In an October 19 interview with DCFS, mother denied any history of domestic violence with J.S., but acknowledged having “heated” arguments with her husband. She alternatively admitted and denied that she and J.S. had argued in front of J.B. Mother recalled the police coming to her home in early September on a domestic violence call. She had just had a miscarriage, and was in pain. She and J.S. had a “heated” non-physical argument after he brought her stepsons home, even though she had asked him not to do so. Mother had called J.B.’s maternal grandmother, who called the police. Mother claimed to have kicked out J.S. and his sons before the police arrived, and denied blocking a doorway to stop them from leaving. She also denied J.S.’s claim that she smashed his phone to prevent him from making a call, but acknowledged having confiscated her stepsons’ phones earlier that day because they were disrespectful. Mother did not recall what she told the police. J.B. had been home asleep during the incident, and woke up when the police arrived.

Mother denied having seen J.S. physically discipline J.B. After J.B. told her his stepbrothers had been mean to and pushed him, mother no longer wanted J.S.'s children in her home. She claimed that J.B. had a vivid imagination. She also believed that her stepsons' mother was encouraging the children to lie, and her stepsons' therapists made false allegations that her relationship with J.S. was having a negative impact on his sons. Mother believed her stepsons' mental health issues arose from problems they experienced in their mother's home, not in hers.

J.S., Jr., met with the DI on October 17. He said that J.S. and mother were always arguing, yelling and screaming at each other, and sometimes pushed one another. Once, they were "at a party and [mother] got mad at [J.S.]. [J.S., Jr.] didn't see them fighting but . . . [he] saw [his] dad . . . bleeding from the ear." J.S., Jr., said Ja.S. had seen mother scratch J.S. on the ear, and he heard his uncle say that mother scratched J.S. and made him bleed. J.B. was also at that party, but J.S., Jr., did not know if he witnessed the scratching incident. J.S., Jr., told the DI that, the last time he was at mother's and J.S.'s house, mother got mad at J.S. while he was drinking a glass of wine, but J.S. did not know why she was angry. Mother and J.S. had argued on an outdoor balcony. When J.S. came back inside, he announced that he and his sons were leaving, but mother blocked the door and kept pushing J.S. when they tried to go. Mother also grabbed Ja.S.'s cell phone, threw it to the floor and broke it to stop his brother from calling their grandmother. She "tried to grab [J.S., Jr.'s] cell phone too but [he] didn't let her." J.B. had been home and in his room during this

altercation. He came out, but mother yelled at him to go back to his room.

Ja.S. told DCFS he did not like mother because she always fought with his father, who also yelled at her. Ja.S.'s account of his last visit to mother's home tracked his brother's story. J.S. had a glass of wine after returning from the pool. Mother got mad at him and they yelled at each other on the balcony. J.S. came back in and started listening to music, and mother got angrier. J.S. told his sons to gather their belongings to go to their grandmother's house. Mother grabbed Ja.S.'s cell phone, threw it to the ground and broke it, and tried to grab J.S., Jr.'s phone. (Ja.S. showed the DI his phone with a shattered screen.) J.B. was home in his room during the argument and when he emerged, mother instructed him to go back to his room. Ja.S. said he and his brother and father had "had to stay there for a while, because [mother] didn't let [them] leave. After a while, [J.S.] hugged [mother] real tight and told [J.S., Jr.] and [Ja.S.] to run downstairs." Soon afterwards, J.S. and his sons left.

Ja.S. had witnessed similar incidents between mother and J.S., who were "always yelling [at] and pushing each other." Most of the time mother pushed J.S., and J.S. only pushed back in order to get away from her. Once, he had seen mother angrily scratch J.S.'s ear and make it bleed. Ja.S. saw mother and J.S. break things (e.g., picture frames), when they got angry. J.B. was present during these incidents and "saw almost everything." Ja.S. denied that his father had punished or hit J.B.

J.S. spoke with the DI and acknowledged that he and mother had their “fair share of arguments.” He denied that their arguments had ever become physical or that he had engaged in domestic violence. J.S. could not recall if mother pushed him, broke his son’s phone or tried to stop him and his sons from leaving the home on September 3, but noted she had been going through a very difficult time. J.S. remembered only that he left with his sons so they would not see him argue with mother. J.S. denied having hit J.B. or physically disciplining his own children. He attributed the current DCFS investigation to problems caused by his sons’ mother, who had a history of sabotaging his relationships.

J.B.’s MGM told DCFS she had little contact with mother and did not know if mother had a history of domestic violence. Mother contacted MGM on September 3, and asked her to call the police because of J.S. Concerned for the safety of mother and J.B., MGM had done so immediately. MGM believed J.S. had a drinking problem, but had no information regarding domestic violence, or about him abusing J.B. J.B. had told MGM he did not like J.S. or his stepbrothers because they were mean. However, in the past, J.B. had described people as “mean” if they refused him something he wanted.

DCFS reported that mother and J.S. had been involved for about a year and had been married since March 2017. They had now ended the relationship and had no plans to reconcile. DCFS expressed concern both that mother refused to acknowledge her history of domestic violence, and that she was adamant that there had been no domestic violence on September 3. Mother also had refused to accept any responsibility for her actions. Specifically, DCFS claimed that mother

blatantly disregarded the safety of her son, who was present during her physical altercation with J.S. in early September, when she purportedly grabbed and broke her stepson's phone. Police records obtained by DCFS evidenced the response to MGM's call in early September, and also reflected that J.S.'s ex-wife had contacted law enforcement to report that mother called her to say she was being assaulted by J.S., who might be under the influence. A log from September 3 reflected that an emergency protective order was issued that day against J.S. Police records also reflected that, on October 3, officers responded to a domestic violence report that J.S. and mother were involved in a dispute and J.S. was trying to break car windows. However, both J.S. (the suspect) and mother (the victim) left before officers arrived.

Jurisdiction/Disposition Hearing

The combined jurisdiction/disposition hearing was conducted on November 1, and the court admitted DCFS's reports into evidence. Mother requested that the petition be dismissed or, in the alternative, that the domestic violence allegations be amended to reflect that she was the victim. She also maintained that the domestic violence allegations were not encompassed by section 300, subdivision (a), as there was no evidence that J.B. was at risk of non-accidental injury. DCFS's and J.B.'s counsel urged the court to sustain the petition in its entirety. The court sustained the counts alleging domestic violence, but dismissed the allegations that J.S. had physically abused J.B. (§ 300, subds. (a), (b)(1).)

Proceeding to disposition, over DCFS's objection, the court admitted two October 2017 letters offered by mother. The first indicated that she had begun to attend a parenting program. The second noted that mother was participating in psychotherapy focused on "stress management, improving communication skills, and increasing overall self awareness," and had shown herself to be "highly motivated," and "eager for self-improvement and insight, and earnest regarding creating the best environment for her son." Mother requested a home-of-mother order. She argued that she should not be required to participate in a year-long domestic violence program for perpetrators, because that issue was subsumed within the individual counseling component of her reunification plan.

DCFS argued that, despite evidence demonstrating that mother had been the aggressor in domestic violence in the home, mother had made no effort to address that issue. DCFS requested removal. J.B.'s counsel informed the court that the child wished to return to mother's care. Nevertheless, the child's counsel believed it was necessary that mother demonstrate more progress before J.B. was returned, and suggested that the court authorize unmonitored day visits.

The court declared J.B. a dependent of the court and removed him from mother's custody. The court observed that mother had, at times, been the aggressor in acts of domestic violence, and she and J.S. had engaged in "mutual combat." DCFS was ordered to provide reunification services, including a 52-week domestic violence class for perpetrators. Mother was given unmonitored day visits with J.B. in a neutral setting. Mother timely appealed.

Post-Appellate Proceedings

On August 22, 2018, we granted DCFS's request to take judicial notice of the May 21, 2018, juvenile court order terminating its prior placement order, and ordering that J.B. be placed with mother provided he have no contact with J.S.

DISCUSSION

1. Jurisdictional Findings

Mother contends there is insufficient evidence to support the jurisdictional findings as to her because, by the time of the adjudication hearing, he was at no risk of physical harm and there was no longer any reason to assert dependency court jurisdiction over him.

a. Standard of Review

Jurisdictional findings are reviewed for sufficiency of the evidence. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 184.) Under this standard, we will uphold the findings “unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support [them]. [Citation.]” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.) We will not substitute our deductions for those of the trier of fact. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) The ultimate test is whether the juvenile court reasonably could have made the ruling in question considering the whole record. (*In re David M.* (2005) 134 Cal.App.4th

822, 828.) In the juvenile court, it was DCFS’s burden to prove the allegations of the petition by a preponderance of the evidence. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598.) On appeal, mother must demonstrate that the jurisdictional findings lack substantial evidentiary support. (*Ibid.*)

b. *The Jurisdictional Findings are Supported by Substantial Evidence*

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)). We will focus on the statutory ground for jurisdiction in subdivision (b) of section 300.⁶ Section 300, subdivision (b)(1), provides a basis for juvenile court jurisdiction if the child has suffered, or there is a

⁶ We acknowledge that we have discretion to reach the merits of a challenge to a jurisdictional finding where, as here, that finding serves as a basis for a challenged dispositional order. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) However, as discussed in Section 2 below, mother’s challenge to the dispositional order is moot. Accordingly, we decline to exercise our discretion to review her challenge to the court’s subdivision (a) jurisdictional findings on the merits.

substantial risk the child will suffer, serious physical harm or illness because of the parent’s failure to adequately supervise or protect the child or provide adequate medical treatment.

Exposure to domestic violence may serve as the basis for jurisdictional findings under section 300, subdivision (b)(1), because such violence may place a child at substantial risk of harm. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 (*Heather A.*), disapproved on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628; *In re T.V.* (2013) 217 Cal.App.4th 126, 134 [“Exposing children to recurring domestic violence may be sufficient to establish jurisdiction under section 300, subdivision (b)”] (*T.V.*); *In re R.C.* (2012) 210 Cal.App.4th 930, 941 (*R.C.*); *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562 (*Sylvia R.*.) “[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*Heather A.*, *supra*, at p. 194; see also *In re Basilio T.* (1992) 4 Cal.App.4th 155, 169.)

““[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” [Citation.] Children can be “put in a position of physical danger from [spousal] violence.” (*R.C.*, *supra*, 210 Cal.App.4th at p. 941.) Even though the child was not physically harmed by the domestic violence, “[a] cycle of violence [involving the parent] constitute[s] a failure to protect [the child] ‘from the substantial risk of

encountering the violence and suffering serious physical harm or illness from it.’ [Citations.]” (*T.V., supra*, 217 Cal.App.4th at p. 135.)

The child need not actually be abused or neglected before the court can assume jurisdiction. “[Section 300, subds. (a) and (b)] require only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose of [section 300] ‘is to provide maximum safety and protection for children who are currently . . . being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.’ (§ 300.2.) ‘The court need not wait until a child is seriously . . . injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*I.J., supra*, 56 Cal.4th at p. 773.) “[T]he court may . . . consider past events when determining whether a child presently needs the juvenile court’s protection. [Citations.] A parent’s past conduct is a good predictor of future behavior. [Citation.] ‘Facts supporting allegations that a child is one described by section 300 are cumulative.’ [Citation.] Thus, the court ‘must consider all the circumstances affecting the child, wherever they occur.’ [Citation.]” (*T.V., supra*, 217 Cal.App.4th at p. 133.)

Mother does not claim there is insufficient evidence to support the court’s finding that she and J.S. engaged in domestic violence in J.B.’s presence. Rather, she argues that J.B. was no longer at risk by the time of the jurisdictional hearing because she had “distanced herself from [J.S.] and obtained protective orders.” Although mother did make an effort to isolate herself and J.B. from J.S., she fails entirely to acknowledge that she too was a perpetrator of domestic violence.

A generous interpretation of mother's conduct is that she simply failed to recognize the risk her own conduct posed to her young son. But one "cannot correct a problem one fails to acknowledge." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)⁷ Mother ignored evidence that, on more than one occasion, it was she who was the aggressor in incidents of domestic violence. We agree with the juvenile court's implicit conclusion that it was unlikely that mother was able adequately to address and begin to resolve her own anger management problems or her tendency toward physically violent domestic relationships solely by distancing herself from J.S. Mother's claim that J.B. was not at risk of emotional damage demonstrates a lack of understanding of the harsh impact on her young son of exposure to her conduct. Common sense, as well as "expert opinion indicate [that] spousal abuse is detrimental to children.' [Citations.]" (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.) It is a form of secondary abuse; children are affected by what happens around them as well as by direct harm. (*Heather A., supra*, at p. 195, fn. 11; see also *Sylvia R., supra*, 55 Cal.App.4th at p. 562.)

The record contains substantial evidence to support the court's findings under section 300, subdivision (b). The record contains evidence that domestic violence took root before this case began (per J.S.'s sons). The record contains no evidence that mother was

⁷ Mother wanted it both ways: she wanted to deny any wrongdoing or endangering conduct, but also to claim to have taken protective measures by obtaining a TRO.

rehabilitated: she had not begun, let alone completed education or training she needed to ensure that she would be able to avoid engaging in (and exposing J.B. to) domestic violence in her future relationships. These issues had not yet been addressed at the time of the jurisdictional hearing. This is evidence of a substantial risk that, at the time of the hearing, mother had not yet addressed the problems that gave rise to and necessitated J.B.'s detention and exposed him to a substantial risk of harm. The jurisdictional findings are affirmed.

2. *The Dispositional Order is Moot*

Mother also appealed the order removing J.B. from her care. However, as reflected in its May 21, 2018 minute order, entered during the pendency of this appeal, the juvenile court found mother had made substantial progress “toward alleviating or mitigating the causes necessitating placement” and returned J.B. to her care.

Dismissal for mootness under such circumstances is not automatic. We review the matter on a case-by-case basis to determine whether subsequent events in the case have rendered the appeal moot, or whether the juvenile court's decision could affect the outcome in a subsequent dependency or family law proceeding. If so, the matter is not moot. (*In re A.B.* (2014) 225 Cal.App.4th 1358, 1364.)

However, an action originally based on a justiciable controversy cannot be maintained on appeal if questions have been rendered moot by subsequent acts or events and reversal would have no practical effect. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) This is such a case. The question of the propriety of the dispositional orders is moot.

DISPOSITION

The judgment is affirmed as to the jurisdictional findings. The appeal from the dispositional orders is dismissed as moot.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

MANELLA, P. J.

MICON, J.*

*Judge of the Los Angeles County superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.